



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 11, 2003

Mr. Harold Willard  
Police Legal Advisor  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

OR2003-4806

Dear Mr. Willard:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 184102.

The Lubbock Police Department (the "Department") received a request for the following three categories of information:

1. Any domestic or child welfare or criminal [sic] involving [two named individuals for a three year period of time].
2. Calls made to Sundowner Apt. # 176 . . . or Nat Williams Elem[entary].
3. Case numbers 03-14952 and 03-15029.

You inform us that the Department has released some responsive records to the requestor. However, you assert the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This

provision encompasses the doctrine of common-law privacy. Common-law privacy protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Based on our review of the submitted information, we believe a portion of the submitted information contains such highly intimate or embarrassing facts as to warrant protection under common-law privacy. In addition, the public does not have a legitimate interest in the information. Therefore, the Department must withhold the information we have marked under section 552.101 of the Government Code and common-law privacy.

Further, we note when a governmental entity compiles criminal history information pertaining to a particular individual, the compiled information takes on a character that implicates the individual's right of privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). In this instance, by requesting information about named individuals for a three year period, we believe the requestor has asked the Department to compile criminal history information, thereby implicating the individuals' right to privacy to the extent either is identified as a suspect, an arrestee, or a defendant. *See id.* Thus, to the extent information responsive to category one of the request exists, we conclude the Department must withhold such information under section 552.101 of the Government Code in conjunction with common-law privacy and *Reporters Committee*.

Next, section 552.101 also encompasses confidentiality provisions of statutes such as section 261.201 of the Family Code. Section 261.201 reads, in pertinent part, as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a)(1), (2). Section 261.201 makes information regarding an investigation of suspected child abuse or neglect confidential. Based on a review of the submitted documents, we believe some of the information consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. Assuming the Department has not adopted regulations regarding release of this type of information, we conclude some of the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Therefore, the Department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Next, you contend section 552.108 of the Government Code excepts some of the submitted information. Section 552.108(a)(1) states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986) (law enforcement agency must explain how release of particular records or parts thereof will interfere with law enforcement or prosecution). You inform us that one of the submitted reports pertains to a pending investigation. Based on your representations and our review of the submitted information, we believe you have established that release of the information at issue “would interfere with the detection, investigation, or prosecution of crime.” *Id.*

Additionally, you claim section 552.108(a)(2), which excepts information concerning an investigation that concluded in a result other than conviction or deferred adjudication from required public disclosure. *See* Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You inform us that some of the information at issue pertains to investigations that concluded, but did not result in a conviction or deferred adjudication. Therefore, we conclude section 552.108(a)(2) applies to some of the submitted information.

However, section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), which includes a detailed description of the offense. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered basic information). Thus, with the exception of the basic front page offense information, the Department may withhold the information we have marked from disclosure based on section 552.108 of the Government Code. The Department has the discretion to release all

or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the Department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with either common-law privacy or section 261.201 of the Family Code. With the exception of basic information, the Department may withhold the information we have marked under section 552.108 of the Government Code. The Department must release the remainder of the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Christen Sorrell".

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 184102

Enc: Submitted documents

c: Ms. Margaret Kelley  
814 Main Street  
Lubbock, Texas 79401-3418  
(w/o enclosures)